

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

ARY Jewelers, LLC.,)
Plaintiff,)
)
v.) CIVIL ACTION NO. 04-CV-10281 EFH
)
IBJTC Business Credit Corp. and)
David Molinario,) AFFIDAVIT OF THOMAS BONVILLE
Defendants.)
)

THOMAS BONVILLE, being sworn, deposes and states as follows:

1. I submit this affidavit at the request of Plaintiff's attorney in support of Plaintiff's response to Defendants' Motion for Summary Judgment.
2. I have been retained as an expert witness in the case of plaintiff, ARY Jewelers, L ("ARY") against defendants, IBJTC Business Credit Corp. ("IBJ") (formerly IBJ Whitehall) . David Molinario (collectively "Defendants") by the Carrigan Law Firm, L.L.P. I was asked review documents provide to me as listed in the attached Exhibit 1 and based on my thirty year experience, training, and education to opine about the actions and inactions of IBJ in communication of ARY information to competitors. I also reviewed and opine about whether employees of IBJ acted in accordance with generally-accepted banking standards.
3. I have an MBA degree with a major in financial management from Pace University awarded in 1983 and a BBA degree with a major in accounting from Pace University awarded in 1976 began my career in the banking industry in December 1976; and for a period of twenty years, I was employed by two financial institutions. I have held various positions, including vice president, executive director and senior vice president. I had responsibility for branch networks as well

systems and operations and had responsibility for customer contact and supervisory responsibilities for back-office processing of both business and consumer accounts. A more detailed Curriculum Vitae is attached as Exhibit 2.

4. My opinion expressed herein is based on the following considerations:

(a) In November 2000, ARY entered into a Stock Purchase Agreement with Scott W. Krigel, Trustee of the Scott W. Krigel Revocable Trust, for the purchase of the common stock of Krigel's ("Krigel's"), a Kansas corporation that operated a chain of jewelry stores. Krigel's was in bankruptcy and the intention was for Krigel's to emerge from bankruptcy through the infusion of fresh capital from ARY and the obtaining of new credit facilities on the strength of ARY's financial support. It was in fact a condition of ARY's obligation to purchase Krigel's stock that Foothill Capital Corporation ("Foothill"), Krigel's principal lender, consent to continue its financing of Krigel's after it emerged from bankruptcy, since continuation of financing by Foothill or another lender was critical to the business plan worked out by ARY and Krigel's. At the end of December 2000 or beginning of January 2001 ARY, through its agent Gohar Hussein, approached IBJ Whitehall to investigate the possibility of alternate financing. IBJ Whitehall did in fact propose tentative financing terms in a term sheet dated January 24, 2001 and subsequently prepared an extensive draft of an internal credit proposal dated February 28, 2001. In the course of its due diligence, however, IBJ Whitehall obtained copies of news articles from a third party investigator that reported allegations of misconduct in Pakistan by an ARY affiliate. Solely on the basis of these articles, IBJ Whitehall declined to provide the financing requested by ARY and Krigel's. IBJ Whitehall, on its own initiative and without the knowledge or consent of ARY, then proceeded to volunteer to Foothill, with whom it had had no previous contact on this matter, that it had denied the financing

requested by ARY and Krigel's and indicated that it had done so based on allegations of misconduct by an ARY affiliate. It then furnished Foothill with copies of the damaging documents. Foothill subsequently, because of the damaging information forwarded by IBJ Whitehall, altered the terms of its proposed financing of Krigel's in such ways that the Stock Purchase Agreement was frustrated and ARY's acquisition of Krigel's collapsed.

5. In preparing this affidavit and my report, which has been previously provided, I reviewed depositions of various witnesses, and exhibits pertaining to the relationship between ARY and Whitehall as well as pleadings in this case. These materials are listed in Exhibit 2. I have also relied on my general knowledge, experience, training, and expertise in the areas of finance, banking practice, and lending. I reserve the right to amend and supplement this affidavit in the event that I receive and review additional documents or information that I have not received or reviewed at the date of this affidavit.

6. Molinario testified as follows:

Q: Is it your understanding that for you guys in this industry, it's part of your professional courtesy to one another that you as competitors in the loan bidding process share information with each other as professional courtesy about potential clients?

A: That was the first time I recall that happening.

Deposition of David Molinario ("Molinario Depo.") page 107, lines 11 - 18. And Thomas Morgan (the Foothill employee to whom IBJ conveyed the information) testified:

Q: Do you have any duty to protect the information of your borrowers of an account at a lending institution?

A: Do I have a confidentiality agreement with each of my borrowers? No, I don't. But it is my practice and the practice of my firm not to disclose information about my

borrower that my borrower does not give me permission to disclose.

Deposition of Thomas F. Morgan (“Morgan Depo.”), page 147 line 15 - 25. Frank O’Con ,

Molinario’s supervisor at IBJ testified:

Q: But just so I understand your testimony Mr. O’Connor, it would be that on an everyday basis, or . . . which are your words, I think my words, the general practice would not be to disclose to your competitors whether or not a loan application has been accepted or rejected. And it would not be an everyday basis or the general practice to disclose reasons or parts of reasons for a declination.

A: It think that’s fair.

Frank O’Connor Deposition (“O’Connor Depo.”), page 133, line 12 - 21. David Molinario and I demonstrated improper conduct by breaching their confidentiality responsibilities to loan requ r ARY. Whatever IBJ’s decisions on the loan may have been, their responsibilities are to the poten 1 client, not competitors. It is an industry standard to protect the confidentiality of clients 1 potential clients. The client and potential clients expect the employees of financial institutio 100 adhere to confidentiality of their business transactions at all times. It is not a generally acce 1 banking practice or industry standard for one financial institution to communicate confide 1 information about a client or potential client with a competitor. Financial institutions should fo 1 generally accepted banking practices by communicating with clients or potential clients the st 1 of their loan requests. They should not communicate such matters to competitors. 1 communicatin with competitors, financial institutions risk damaging their reputation but also 1 client’s or potential client’s trust.

7. Further testimony shows that Molinario and IBJ breached their confidentiality responsibil s to their potential client (ARY). Molinario stated that his supervisor instructed him to do so. . a

vice president of IBJ, Molinario should have known his responsibilities are to protect the right f
potential clients (e.g., ARY) and by sharing information with competitors, he is not protec ;
potential clients.

Q: Do you agree with that, sir, that that is part of the professional courtesy that you owe y r
competitors in this, your industry, to share information with one another about poter l
clients?

A: I don't know if I have an opinion on it. I was doing what I was ed to do. If asked to c t
again, I would do what I was instructed to do.

Molinario Depo., page 107, line 23 - page 108, line 5.

8. If Molinario and IBJ followed acceptable banking policies, they would have notified e
potential client of their decision (whatever it was), not their competitor. The potential client ha i
expectation to be treated in a confidential and professional manner when dealing with an offi l
representative of a financial institution. As vice-president, Molinario has the responsibilit o
demonstrate better judgment by communicating his decision with his potential client not competi .
As a senior representative of a financial institution, Molinario must adhere to good banking pract i
when communicating with his potential clients. Molinario testified:

Q: He [Molinario's supervisor, Frank O'Connor] told you that
the purpose for doing this, this being at least the telephone
call, if not the faxing the news articles for Foothill, was
because Foothill was awaiting a commitment letter from
Whitehall and let me back up, that's what I'm trying to
understand. Tell me one more time, based on your
understanding what Mr. O'Connor told you, your
understanding as to why Foothill was either being called
and/or faxed with this information.

A: Frank told me that it was a professional courtesy to call them
and make them aware that either Foothill or ARY or Krigel's,
I'm not sure who the proper entity would be, would not be
receiving a commitment letter solidifying our ability to move
forward with the transaction.

Molinario Depo., page 117, lines 11 - 20. It is a reasonable expectation on the part of potential clients that if a lending institution decides to reject a potential client's loan application that the lender will not disseminate that information to anyone without the potential client's specific authorization. This expectation is reasonable because when potential clients put their trust in the representatives of financial institutions, they know that their business will be held in the strictest confidence. This is an expectation that clients and potential clients have of their financial institutions. Molinario testified as follows:

Q: Is it also a reasonable expectation on the part of a potential client that if you decide, your private decision which you are entitled to, to reject my loan application or withdraw it, for that matter that you are not going to disseminate it to anyone without my specific authorization: is that reasonable?

A: I believe that would be reasonable.

Molinario Depo., page 142, lines 12 - 20.

9. Financial institutions have written policies and procedures to communicate effectively with their employees. Policies and procedures must be followed when dealing with clients and potential clients. As a vice president, Molinario should have been aware and understood all of these policies and procedures. It is an industry standard for financial institutions to have policies and procedures in place and all employees must adhere to them. Molinario testified as follows:

Q: In fact, I think you said these same written policies and procedures are in place and in effect at Whitehall, correct?

A: I don't know if I actually have ever been provided with policies and procedures book.

Molinario Depo., page 189, lines 17 - 23.

10. Molinario, as a representative of his financial institution, did not demonstrate proper conduct when he faxed information about his potential client to his competitor:

Q: Tell me, who was it that Frank O'Connor told you to fax these articles to?

A: Foothill Capital

Molinario Depo., page 96, line 24 - page 97, line 2. David Molinario did not demonstrate proper conduct as a representative of his financial institution when he faxed information about his potential client to his competitor.

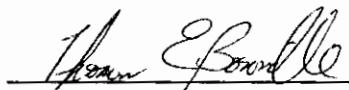
11. Molinario faxed information about a potential client to a competitor. By doing so, he demonstrated improper conduct. Such action is not a standard practice in the banking industry. Molinario breached his confidential responsibility and as vice president of his organization, he should have understood and followed acceptable banking policies and conducted himself in a professional manner.

12. Additionally, the financial institution and its employees have responsibilities to clients and potential clients. This trust was violated when Molinario communicated information about a potential client to a competitor. The financial institution's responsibility should have been to the potential client not to their competitors.

13. Additionally, Molinario does not know if he ever actually received a company policy and procedure book. As a vice president, Molinario must understand all of the company's policies and procedures, which becomes a more challenging task if the materials have not been provided.

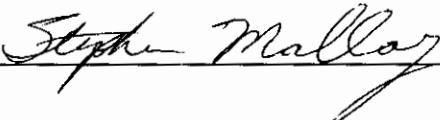
14. Professionals that are following generally accepted banking practices would protect the client or potential client by not sharing information about the client. Molinario faxed his potential client information to a competitor.

15. All of the documents and information I relied upon are of the type reasonably relied upon by experts in my particular field (banking) in forming opinions or inferences upon the subjects/opinions expressed herein. All exhibits attached hereto are true and correct copies.



Thomas Bonville

Sworn to before me on this 12 day of September, 2005.



Stephen Malloy

Notary seal:

STEPHEN MALLOY
Notary Public, State Of New York
No. 01MA6068277
Qualified in Westchester County
My Commission Expires 12/31/05